

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 09-CR-135

KELLY P. LACEY,

Defendant.

ORDER ADOPTING THE MAGISTRATE JUDGE'S RECOMMENDATION (DOC. # 26)
AND DENYING DEFENDANT'S MOTION TO SUPPRESS PHYSICAL EVIDENCE AND
STATEMENT (DOC. # 18)

The defendant, Kelly P. Lacey, filed a Motion to Suppress Physical Evidence and Statement on July 21, 2009 (Doc. # 18).¹ In the motion, Lacey contends that officers entered his home without a warrant and without consent. Further, he argues that he was not advised of his *Miranda* rights before making incriminating statements during a custodial investigation.

On August 12, 2009, Magistrate Judge Patricia Gorence held an evidentiary hearing on the motion. Based on the testimony presented at the hearing, Judge Gorence concluded on the record that the defendant consented to law enforcement officers entering his home on February 19, 2009, and that he agreed to speak with them voluntarily. Also, Judge Gorence concluded that Lacey was not "in custody" for the purposes of *Miranda* at the time he was spoke with the officers.

On August 13, 2009, Judge Gorence issued a written Recommendation that this court deny Lacey's Motion to Suppress.² The Recommendation directed the parties

¹ On that same day, the defendant filed a Motion to Dismiss the Indictment (Doc. # 15). That motion is still pending before the magistrate judge.

² This case was originally assigned to U.S. District Judge J.P. Stadtmueller, and the Recommendation was addressed to his chambers. On August 18, 2009, Judge Stadtmueller recused himself from further proceedings, and this case was referred to the undersigned judge.

to 28 U.S.C. § 636(b)(1)(A)-(C) and General Local Rule 72.3, and noted that they had ten days from service of the Recommendation to file written objections for consideration by this court. No objections have been filed.

On dispositive matters and certain other matters enumerated in 28 U.S.C. § 636(b)(1)(A) and Fed. R. Crim. P. 59, including motions to suppress evidence, a magistrate judge may only propose findings and make recommendations. A district court must review de novo the recommendations of the magistrate judge to which a party timely objects. 28 U.S.C. § 636(b)(1)(C); Fed. R. Crim. P. 59(b)(2), (3). However, portions of a recommendation to which no party objects are reviewed for clear error. *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). Thus, the de novo standard of review applies only to matters on which a party objects to a magistrate judge's recommendation (rather than an order) on the issues set forth in § 636(b)(1)(A) and Fed. R. Crim. P. 59(b)(1).

The court has reviewed Judge Gorence's Recommendation as to the defendant's Motion to Suppress and finds no clear error. Therefore,

IT IS ORDERED that the magistrate judge's Recommendation (Doc. # 26) is adopted, and for the reasons set forth by the magistrate judge, the defendant's Motion to Suppress Physical Evidence and Statement (Doc. # 18) is denied.

Dated at Milwaukee, Wisconsin, this 22nd day of September, 2009.

BY THE COURT

/s/ C. N. Clevert, Jr.

C. N. CLEVERT, JR.

CHIEF U. S. DISTRICT JUDGE